*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION No.1437 of 1999

%21-3-2006

D.Ajanthamma w/o late D.Narappa Reddy and others

...PETITIONERS

Vs.

$ The Joint Collector, Chittoor, Chittoor District and another.

...RESPONDENTS

! COUNSEL FOR PETITIONERS: Sri S.V.Muni Reddy,
^COUNSEL FOR RESPONDENTS: Government Pleader for Revenue

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>HEAD NOTE:

? CASES REFERRED:

1. AIR 1972 AP 1 (FB)

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1437 OF 1999

21.3.2006

Between:

D.Ajanthamma w/o late D.Narappa Reddy and others

… Petitioners

AND

The Joint Collector, Chittoor, Chittoor District and another.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1437 OF 1999

ORDER:

The petitioners filed the present writ petition seeking a writ of Mandamus declaring the proceedings of the first respondent in R.Dis (E1)/22429/93, dated 24.10.1998, as illegal, unjust and void and for a consequential direction to the respondents to restore original mutation and entries in 10(1) revenue account in respect of the lands admeasuring Acs.31.90 in survey No.53 and Acs.9.40 in survey No.55 (hereafter called, the subject land) of Umamaheswarapuram, now situated in Katuru village, Buchinaidukandriga Mandal in Chittoor District. The first petitioner is mother and petitioners 2 and 3 are daughter and son respectively of the first petitioner. They are statedly legal heirs of one D.Narappa Reddy. By reason of the impugned order, the settlement patta issued under A.P.(Andhra Area) Estates (Abolition and Conversion into Ryotwari) Act, 1948 (the Act, for brevity) to the vendor of Narappa Reddy became ineffective, as a result of which the petitioners' alleged title to the subject land was not recognized. Hence, the present writ petition.

The brief chronology of events leading to filing of the writ petition is as

follows. According to the petitioners, the subject land was originally under the possession of Arani Ramana Reddy, who obtained a patta from the estateholder. On an application made by him, the Assistant Settlement Officer, Chittoor, by proceedings, dated 01.10.1965, issued a ryotwari patta under Section 11(a) of the Act to Arani Ramana Reddy. It is the case of the petitioners that the said patta was implemented and mutation effected on 10.10.1969. Aggrieved by this, G.Subbamma and others filed writ petition being W.P.No.1290 of 1971 seeking a direction from this Court to the Settlement Officer, Visakhapatnam, to dispose of the revision petition filed by them. The same was disposed of observing that the Settlement Officer may dispose of the revision petition, which is pending for a long time. In the meanwhile, the Director of Settlements (DoS) sought information for initiating action under Section 5(2) of the Act (*suo motu* revision). The Joint Collector submitted report to DoS opining that no revision need be taken up. In 1983, the revenue authorities issued a notice under Section 7 of the A.P.Land Encroachment Act, 1905 (Encroachment Act, for brevity) to Narappa Reddy to show cause as to why he should not be evicted from the lands in survey Nos.53 and 55. The recipient of the notice submitted explanation and the competent authority passed an order under Section 6 of the Encroachment Act directing eviction. Assailing the same, Narappa Reddy filed W.P.No.9403 of 1983. By order, dated 24.11.1987, this Court set aside the notice/order under Section 6 of the Encroachment Act and remanded the matter to the Tahsildar, Tottambedu, to enquire into the claim and pass orders in accordance with law. After the said order was passed, the second respondent, it is alleged, changed the entries in the revenue records showing the subject land as Government land. Aggrieved by the same, Narappa Reddy filed W.P.No.14572 of 1993 before this Court. A Division Bench of this Court dismissed the writ petition on 11.06.1997 giving liberty to Narappa Reddy to file application before the revenue authorities concerned for redressal while observing that the question raised in the writ petition can be decided only by revenue authorities. Thereafter, the petitioners herein as legal representatives of Narappa Reddy filed a miscellaneous petition before the Joint Collector, Chittoor, for restoration of original mutation and entries in 10(1) accounts of the subject land. By impugned order, the Joint Collector rejected the request of the petitioners for mutation and restoration of entries in revenue records.

A counter affidavit is filed by the second respondent opposing the writ petition along with necessary material. At the time of hearing, the learned Assistant Government Pleader for Revenue (General) has placed before this Court the original record pertaining to the case. The case of the Government is to the effect that Katuru village, which is an estate village was taken over by government in 1952 under the provisions of the Act but the patta allegedly issued to Arani Ramana Reddy on 01.10.1965 is a fake patta. No ryotwari patta was granted to him. There is another file with same S.R.Number relating to S.No.120 of Brahmanapalle village of Srikalahasti Taluk, and therefore, the question of treating the subject land of Katuru as patta land does not arise. The land in survey No.53 admeasuring Acs.31.40 is cattle grazing ground, which was used for the common purpose by the villagers and the land admeasuring Acs.9.40 in survey No.55 is Kalangi River Poramboke. Both the survey numbers are Poramboke lands, which are being used by the villagers,

and the patta produced by the petitioners is a fake one. It is the further case of the respondents that though initially the patta allegedly issued by Assistant Settlement Officer, Chittoor, was implemented by Tahsildar, Srikalahasti, subsequently, the Tahsildar cancelled the implementation order treating the land as Poramboke as per the orders of the District Collector, dated 28.04.1976. It is also stated in the counter that the land was inspected on 30.06.2004 when it was found that there is no irrigation well or motor and that the land is uncultivable area of Acs.15.00 and cultivable waste area of Acs.15.45 and that only an extent of Acs.0.95 is under cultivation, where paddy crop is raised. The land in survey No.55 is in the midst of Kalangi River and is not fit for cultivation.

Learned counsel for the petitioners made the following submissions. Narappa Reddy purchased the land from the pattaholder and his name was duly entered as pattadar in the village adangals and subsequently he also filed a declaration under A.P.Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The patta was also implemented and has become final, and therefore, the sale cannot be set aside by the Joint Collector. If a patta has to be nullified, it can be done only by DoS under Section 5(2) or the Board of Revenue (now Commissioner of Land Revenue) under Section 7(c) of the Act. Therefore, the order passed by the Joint Collector is without jurisdiction. The application was moved before the Joint collector for restoration of mutation and correction of entries in revenue accounts and therefore without proper notice, patta given to Arani Ramana Reddy could not have been cancelled by the Joint Collector. Lastly, he would urge that when Narappa Reddy was cultivating the land since the date of his purchase, after getting the land mutated in his name, the respondents could not have cancelled the implementation without notice to the pattaholder or subsequent purchasers.

Learned Assistant Government Pleader for Revenue (General) submits that the land in survey No.53 is classified in the revenue records as grazing land, which is being utilized by all the villagers, that the land in survey No.55 is classified as River Poramboke and therefore there could not have been any valid patta under the Act. He placed strong reliance on the Full Bench Judgment of this Court in **P.Chenchulakshmma v E.A.Tribunal**. Secondly, he would urge that the Assistant Settlement Officer, Chittoor, in file No.122/11(A)/65-KHT, dated 01.10.1965 issued a patta to Vemur Rosaiah Naidu and Bollampalle Krishnama Naidu in respect of the land admeasuring Acs.9.76 in survey No.120 (P.No.467/5P) of Brahmanapalle, hamlet of Papanapalle of Kalahasti Taluk in Chittoor District and the patta, dated 01.10.1965 with reference to the same file number/case number produced by the petitioners is a fake patta. He has placed the original record showing that the Assistant Settlement Officer reported that no such patta in respect of lands in survey Nos.53 and 55 of Katuru village was granted by the Assistant Settlement Officer, Chittoor. He also points out that when this was found, the District Collector directed the Tahsildar to cancel the implementation and accordingly in 1976 itself, the implementation proceedings were cancelled and Narappa Reddy or the petitioners have not challenged the same before anybody. Therefore, it is urged that when once the patta is not implemented, the petitioners cannot claim any right to enforce based on a patta, which is found to be fake.

Whether, under the provisions of the Act, it is permissible for the competent authority to issue a patta in respect the land which is classified as cattle grazing land or River Poramboke? Whether it is permissible that the Assistant Settlement Officer should have dealt with the question of grant of patta for the land situated in two different villages in the same file having same case number and file number? Whether a person who obtains patta under the Act and which is not implemented, can the revenue authorities to effect mutation and change entries in the revenue records? These are the questions which are incidental to the examination of validity of the impugned order of the first respondent.

A Full Bench of this Court in **Chenchulakshmma** (supra) has considered the question whether the Settlement Officer/Assistant Settlement Officer can issue patta in respect of a grazing land or a Government Poramboke land or tank bed land. Making reference to Estates Land Act, 1908 as well as the provisions of Estates Abolition Act, 1948 the Full Bench held as under.

> The following principles emerge from the aforesaid discussion; Lanka Lands, lands of the description specified in Section 3(16)(a)(b) and (c) of the Estates Land Act*, and forest lands are excluded from the purview of Section 13(b)(iii) of the Abolition Act and no ryotwari pattas could be granted to the landholder under that provision in respect of those lands. The mere non-user of the communal lands for the purposes for which they were intended and set apart, as on the date of the application of the Abolition Act to the estate is not material and does not alter their communal character, if, by the time the Abolition act came to be applied to the estate in which they are situate, they were lands coming within the description specified in Section 3(16)(a)(b) and (c) of the Estates Land Act. Despite the disuse to which they have fallen and despite the other users they have been unauthorizedly and illegally put to they would nonetheless continue to be lands belonging to the category specified in Section 3(16)(a)(b) and (c) of the Estates Land Act in the absence of any order under Section 20-A(1)(b) of the Estates Land Act.

Though a categorical averment is made in the counter affidavit filed by the second respondent that the land in question is either cattle grazing land or River Poramboke, there is no denial by the petitioners nor did they file any reply affidavit or documents to prove otherwise. Therefore, it stands reason to infer that the land in question is not one of the categories of land in respect of which a valid patta can be granted either under Section 11(a) or 11(b) of the Act. Secondly, a perusal of the record would show that even in 1976, the revenue authorities found that the land in respect of Arani Ramana Reddy obtained patta or managed to produce patta is a fake patta. The District Collector issued proceedings based on which the Tahsildar, Srikalahasti cancelled the implementation (earlier implemented on 10.10.1969) duly correcting revenue entries again restoring the status of the land as Government grazing land/River Poramboke. The petitioner cannot feign ignorance of this proceeding. As noticed earlier, the predecessor of the petitioners were vigilant and he filed two representations – one in 1983 and the other in 1993. This will lead to a conclusion that the petitioners are claiming right under a patta allegedly granted to

the vendor of their predecessor and which was not implemented. This leads to another conclusion that the land remains the Government Poramboke/grazing land/river bed tank, and therefore, no right of the petitioners can be enforced nor can they get any right to the land if the mutation is effected. Thirdly, the record produced before this Court would show that in case/file S.R.No.122/11(a)/65-KHT, dated 25.10.1965, the Assistant Settlement Officer, issued patta to Vemur Rosaiah Naidu and Bollampalle Krishnama Naidu in survey No.120, admeasuring Acs.9.76 situated at Brahmanapalle, hamlet of Papanapalle village. Each claim made under the Act was separately dealt with by the Assistant Settlement Officer and when in the same file, a patta is granted in respect of Brahmanapalle land, it is quite improbable that the same Assistant Settlement Officer could have granted patta in the same file in respect of different lands in different villages to Arani Ramana Reddy. The patta produced by the petitioner is *ex facie* a fake patta.

The matter was heard at length on 27.02.2006. It was noticed that the Joint Collector rejected claim of the petitioners *inter alia* on the ground that no authenticated orders are produced. Such orders are not produced before this Court also. This was pointed out to the learned counsel for the petitioners. He sought one week time to produce all the documents including the original patta granted to Arani Ramana Reddy, the vendor of Narappa Reddy. Again when the case was posted on 06.03.2006 and 07.03.2006, the learned counsel for the petitioners has not produced original patta allegedly granted to Arani Ramana Reddy. He only produced illegible Xerox copy of patta in the absence of any such rightful patta before this Court, it is not possible to accept the case of the petitioners. An adverse inference has to be drawn against them to the effect that there is no such original patta and the Xerox copy produced before this Court is a copy of a fake patta. As seen from the file, the Joint Collector made enquiries before coming to such conclusion and this Court has no reason to defer with such conclusion, especially even the field maps of survey Nos.53 and 55 of Umamaheswarapuram, hamlet of Katuru village show that it is a poramboke land and on personal inspection, revenue officials found the true ground position that survey No.53 is a grazing land and survey No.55 is a River Poramboke land.

The submission of the learned counsel for the petitioners that in the absence of any notice, patta cannot be cancelled is a submission to be rejected. If patta is granted in respect of assignable land in a valid manner, such a ground would be available. When the Government pleads and proves that the patta relied on is a fake patta and that no such patta was granted in respect of grazing land/river poramboke, there was no necessity to import the rule of *audi alteram partem*. As directed by this Court, the petitioners moved miscellaneous petition to the Joint Collector and the same was considered in consonance with the revenue record, survey record and settlement record. The submission is therefore devoid of any merit.

This Court has perused the necessary material placed before this Court as well as the original record produced by the learned Assistant Government Pleader. After giving anxious consideration, this Court is not able to countenance any of the submissions made by the learned counsel for the petitioners.

The writ petition is devoid of any merit and is accordingly dismissed with costs.

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(V.V.S.RAO,J)

21.03.2006.

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Note: 1. LR copy be marked.

2. Dispatch order copy within three days i.e., by 24.03.2006.

By order

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